IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF MAY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION Nos.23156 & 24346 of 2004 and 2501 of 2005

And

W.P.M.P.No.2333 of 2005 in W.P.No.23156 of 2004

WRIT PETITION NO : 23156 of 2004

Between:

Pattem Suryaprakash Rao, Late P. Venkateswar Rao,
R/o. 3-1-37, Swamy Vivekananda Street, Secunderabad.

..... PETITIONER

AND

1. Reserve Bank of India, Central Office, Urban Banks Department, 1st Floor, Garment House, Worli, Mumbai-400 018.
2. Commissioner for Cooperation and Registrar of Coop., Society, Gruhakalpa, Exhibition Grounds Road, Hyd.
3. The Prudential Cooperative Bank Limited, R.P. Road, Secunderabad, rep. by its Liquidator.
4. V. Amarender Rao, Liquidator, The Prudential Co-Operative Urban Bank Ltd., Alexander Road, Sairam Towers, 1st Floor, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ Order or Orders, Direction or Directions, declaring the action of the 1st respondent in cancelling the licence of the 3rd respondent Bank vide proceedings
dt.6.12.2004 as illegal, arbitrary and unsustainable and also to set aside the consequential proceedings of the 2nd respondent in appointing the 4th respondent

as liquidator and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.V.SRINIVAS

Counsel for the Respondent No.1: Mr. M.P.UGLE

Counsel for the Respondent No.2: GP FOR COOPERATION

Counsel for the Respondent Nos.3&4: S.Ashok Anand Kumar

WRIT PETITION NO : 24346 of 2004:

Between:

Depositors Association of Prudential Co-operative Bank, Twin Cities), rep. by its President, K.Srinivasulu, C/o. 4-1-216/13/304, Sneha residency, Karthikeya Nagar, Nacharam, Hyderabad.

..... PETITIONER

AND

1. Reserve Bank of India, Central Office, Urban Banks Department, 1st Floor, Garment House, Worli, Mumbai.
2. Registrar of Co-Operative Societies, Govt. of A.P., Hyderabad.
3. V. Amarender Rao, Liquadator, The Prudential Co-Operative Urban Bank Ltd., Alexander Road, Sai Ram Towers, Secunderabad.
4. Prudential Co-Operative Urban Bank Ltd., rep. by its Managing Director, Alexander Road, Behind Hari Hara Kala Bhavan, Secunderabad-03.
5. Government of A.P., rep. by its Prl. Secretary, Co-op And Agriculture, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, especially one in the nature of Writ of Mandamus declaring the action of the 1st respondent in issuing the impugned order in its proceedings NO.UBD.WBS.BSD. IV/LC/71/12/03.0775/2004-05, dt.3.12.2004 as illegal, arbitrary, mala fide, intentional, contrary to object of the Act and not in the best interests of the Depositors and Public and consequently
set-aside the same as illegal and unsustainable and pass any such other or orders as may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.K.V.BHANU PRASAD

Counsel for the Respondent No.1: Mr. K.Srinivasa Murthy

Counsel for the Respondent Nos.3&4: Mr. Ashok Anand Kumar

Counsel for the Respondent Nos.2&5: MR.G.P. for Co-operation

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WRIT PETITION NO : 2501 of 2005:

Between:

Depositors Association of Prudential Co-operative Bank, (Twin CIties), Rep. by its President K.Srinivasulu, C/o. 4-1-216/13/304, Sneha Residency, Karthikeya Nagar, Nacharam, Hyderabad.

..... PETITIONER

AND

1. Government of Andhra Pradesh, Rep. by its Prl. Secretary,
Co-operation and Agriculture, Secretariat, Hyderabad.
2. Registrar of Co-operative Societies, Government of Andhra Pradesh, Hyderabad.
3. Prudential Co-operative Urban Bank Limited, Rep. by its Managing Director,
Alexander Road, Behind Hari Hara Kala Bhavan, Secunderabad-03.
4. V. Amarender, Liquidator, Prudential Co-operative Urban Bank Limited,
Alexdander Road, Sai Ram Towers, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, especially one in the nature of Writ of Mandamus declaring the action of the 2nd Respondent in issuing impugned order at the instance of 1st Respondent Proc.No. 55765/1999 U.B.V., dt.24-1-2005 as illegal, intentional, mala fide, arbitrary, without any authority and contrary to the interim direction and consequently set aside the same as illegal and pass any such other order or orders as may deem fit and proper in the circumstances of the case in the interest of justice.

Counsel for the Petitioner: MR.K.V.BHANU PRASAD

Counsel for the Respondent Nos.1&2: GP FOR COOPERATION

Counsel for the Respondent Nos.3&4: S.Ashok Anand Kumar

W.P.M.P NO : 2333 of 2005

IN

W.P.NO: 23156 of 2004

Between:

Pattem Suryaprakash Rao, S/O Late P. Venkateswar Rao,
R/o. 3-1-37, Swamy Vivekananda Street, Secunderabad.

..... PETITIONER

(Petitioner inW.P.NO : 23156 of2004
on the file of High Court)

AND

1. Reserve Bank of India, Central Office, Urban Banks Department,
1st Floor, Garment House, Worli, Mumbai-400 018.
2. Commissioner for Cooperation and Registrar of Coop., Society,
Gruhakalpa, Exhibition Grounds Road, Hyderabad.
3. The Prudential Cooperative Bank Limited, R.P. Road,
Secunderabad, rep. by its Liquidator.
4. V. Amarender Rao, Liquidator, The Prudential Co-Operative
Urban Bank Ltd., Alexander Road, Sairam Towers, 1st Floor,
Secunderabad.

.....RESPONDENTS

(Respondents in -do-)

Petition under Section 151 of CPC praying the High Court to suspend the Rc no 55765/1999 U.B.V dt 24-1-2005 issued by the 2nd respondent herein pending W.P.NO.23156 of2004 on the file of the High Court.

Counsel for the Petitioner:MR.V.SRINIVAS

Counsel for the Respondent No.1: Mr.M.P.UGLE

Counsel for the Respondent No.2:GP FOR COOPERATION

The Court made the following:

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THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION Nos.23156 & 24346 of 2004 and 2501 of 2005

And

W.P.M.P.No.2333 of 2005 in W.P.No.23156 of 2004

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COMMON ORDER:

Since these petitions are interconnected, they are being disposed of by a common order.

2. W.P.Nos.23156 and 24346 of 2004 are filed questioning the order of the Reserve Bank of India (RBI) dated 06-12-2004 cancelling the banking licence issued to the Prudential
Co-operative Bank Limited (the Bank) a Co-operative Society registered under the provisions of the A.P.Mutually Aided
Co-operative Societies Act, 1995 (1995 Act), and ordering it to stop conducting banking business, including acceptance of and repayment of deposits forthwith, and the consequential order dated 07-12-2004 passed by the Registrar of Cooperative Societies and Commissioner for Cooperation (hereinafter referred to as RCS) appointing a liquidator to wind up the Bank. During the pendency of the petitions, since RCS, through his proceedings in Rc.No.55765/1999 U.B.V. dated 24-01-2005 introduced One Time Settlement (OTS) scheme to the debtors of the Bank, petitioner in W.P.No.23156 of 2004 filed W.P.M.P.No.2333 of 2005 to set aside the said OTS scheme alleging that the said scheme is detrimental to the interests of the depositors of the Bank and the petitioner in W.P.No.24346 of 2004 filed W.P.No.2501 of 2005 for the same relief, questioning the said OTS scheme on the same grounds.

3. The case of the petitioners in W.P.Nos.23156 and 23436 of 2004 is that the RBI cancelling the banking licence of the Bank under Section 22 of the Banking Regulation Act, 1949 (the Act), without properly considering the reply issued by the Bank and the consequential order of the RCS appointing a liquidator to wind up the Bank are unsustainable.

4. On behalf of the RBI, its Deputy General Manager filed his counter affidavit alleging, inter alia, that the RBI issued the order cancelling the banking licence of the Bank only in the interest and welfare of the general public, after taking into consideration all the facts, and after giving all possible opportunities to the Bank to revive, and so writ petition challenging that order, that too when an effective alternative remedy of appeal to the Central Government is availed of by the Bank, is not maintainable.

5. On behalf of the Government and on his own behalf, RCS filed his counter affidavit contesting the claim of petitioners.

6. On his behalf and on behalf of the Bank, the Liquidator of the Bank appointed by the RCS, filed his counter affidavit contesting the claim of the petitioners.

7. The main contention of the learned counsel for the petitioners is that proceedings dated 06-12-2004 impugned in W.P.Nos.23156 and 24346 of 2004 issued by the RBI cancelling the licence of the Bank, in pursuance of the power vested in it by Section 22 of the Act, is not properly exercised as it failed to take into consideration the reply given by the Bank in the proper perspective and passed the order mechanically just reproducing the wording employed in the statute, and the RCS issued proceedings, appointing a liquidator and so both the proceedings are unsustainable, because, the RBI which imposed a moratorium on the Bank through its proceedings dated 21-03-2003, and prohibited the Bank from granting/renewing any Loans and Advances, making any investments, or incurring any liability including borrowal of funds and acceptance of fresh deposits, or disbursing the

existing liabilities or transferring its assets in any manner, should have known that with such onerous conditions and restrictions there can be no scope for the Bank to revive. It is their contention that the RBI's failure to take into consideration the explanation of the Bank that it has recoverable advances to a tune of Rs.557.74 Crores, and cash balance of Rs.151 Crores and that its liability to the Depositors is only Rs.413 Crores, and thereby it will have a minimum surplus of Rs.100 Crores, even if Rs.195 Crores is treated as bad debts, resulted in an erroneous decision. It is their contention that such order is passed only to help the big borrowers from the Bank who have lot of political influence both in the State level and at the Centre, to avoid repayment of huge amounts of money due from them to the Bank for as long a time as possible. It is their contention that RCS was in error in appointing a liquidator without following the procedure prescribed either in the 1995 Act, or the A.P. Cooperative Societies Act, 1964 (1964 Act). It is their contention that as the provisions of 1995 Act, only when the General Body of the Cooperative Society, takes a decision to dissolve the Society, can the RCS appoint a liquidator, and in this case since the General Body of the Bank (Society) did not decide to dissolve the Bank, RCS has no jurisdiction to appoint a liquidator straightaway merely because RBI wanted him to take steps to wind up the Bank. It is his contention that though Section 36-A of 1995 Act makes Sections 115-A and 115-B of the 1964 Act applicable to the mutually aided cooperative societies, appointment of the liquidator by the RCS to wind up the Bank is bad because procedure prescribed by Section 64 of the 1964 Act of issuing a show cause notice and affording an opportunity of being heard is not followed by the RCS. It is also their contention that since 1995 Act is a self contained code the procedure in 1995 Act ought to have been followed by the RCS before appointing a liquidator to wind up the Bank. It is their contention that Government has no power to constitute a committee of MLAs to decide the OTS scheme for a Society registered under 1995 Act and since the impugned OTS scheme is not in accordance with the guidelines issued by the RBI, as it contemplates charging of simple interest only for all kinds of debts and to all debtors though OTS would usually be made applicable only to identified borrowers who have non-performing assets, but not to all the debtors irrespective of their capacity to repay the debt, the OTS scheme introduced by the liquidator, that too without concurrence of the RBI, is unsustainable. It is their contention that the OTS scheme impugned in these petitions is introduced only to help the big borrowers, who wield considerable political influence in the government, at the cost of depositors of the

Bank.

8. The contention of the learned standing counsel for the RBI is that the RBI, after the statutory inspections of the Bank, having found that the Bank is not functioning satisfactorily, initially declared it as a weak Bank, and gave an opportunity to it to revive, but when it failed to recover, it declared the Bank as a sick bank, and finally, after following the procedure prescribed and after considering the explanation of the Bank, by virtue of the powers vested in it, cancelled licence of the Bank under Section 22(4) of the Act and instructed the RCS to wind up the Bank and so in view of the law laid down by the Apex Court in **JOSEPH KURUVILLA VELLUKENNEL v. RBI** and **PEERLESS GENERAL FINANCE AND INVESTMENT CO. LTD. v. RBI** the decision of the RBI should not lightly be interfered in a judicial review, more so because remedy of appeal under Section 22 (5) of the Act is availed and the appeal against the order cancelling the banking licence is pending consideration by the Central Government. The stand of RBI with the OTS scheme is not known since it did not file a counter in W.P.M.P.No.2333 of 2005 and since it is not made a party to W.P.No.2501 of 2005.

9. The contention of the learned Government Pleader is that in view of Section 39A of 1995 Act, Sections 115A and 115B of the 1964 Act would apply to Co-operative Banks registered under 1995 Act also and since Liquidator who was appointed on the instructions of the RBI, as contemplated by Section 115B of 1964 Act, recommended for introduction of OTS scheme, appointment of the liquidator, and the decision of the RBI, to cancel the banking licence of the Bank and to wind it up and the OTS scheme introduced in the welfare of the depositors for speedy payment of the amounts due to the depositors need no interference.

10. The contention of Sri E.Manohar, learned Senior counsel for the Bank and Liquidator appointed by RCS, is, since statutory appeal under Section 22(5) of the Act, preferred by the Officer who was appointed as the person-in-charge of the Bank on 31-02-2004, is pending before the Central Government, writ petitions questioning the order of RBI are not maintainable. It is his contention that since the prayer in

W.P.M.P.No.2333 of 2005 is beyond the scope of W.P.No.23156 of 2004 it is liable to be dismissed. It is his contention that since Section 39 of the 1995 Act provides for voluntary dissolution of a society registered under that Act by its members, and since Section 41 of 1995 Act deals with dissolution of a society in the circumstances stated therein, those sections have no application to a case where RBI gives a direction to wind up a co-operative bank. It is his contention that since Section 36A of 1995 Act, makes applicable Sections 115-A and 115-B of the 1964 Act to Co-operative banks and since Section 115-B(ii) of 1964 Act lays down that an order of winding up of a

co-operative bank can be passed under the provisions of 1964 Act, if so required by the RBI in the circumstances referred to in Section 13D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (1961 Act), and since Section 13D (i) & (ii) of the 1961 Act empower the RBI to direct the winding up of the affairs of a co-operative bank, if it became disentitled to carry on banking business in India by reason of Section 22 of the Act, order of the RCS appointing a Liquidator to the Bank, on the directions of the RBI, is unassailable. He placed strong reliance on **RESERVE BANK OF INDIA v. JOINT REGISTRAR/DISTRICT CO-OPERATIVE OFFICER** where it is held that directions issued by RBI are binding on the RCS and that he has an obligation to pass orders even without issuing a show cause notice. Relying on **VIRENDRA PAL SINGH v. DISTRICT ASST. REGISTRAR** and **B.SURYANARAYANA v. N.1453 THE K.P. CO-OP. BANK LTD.** he contended that merely because a

Co-operative Society is doing banking activity, it does not cease to be a Co-operative Society, and since as per entry 32 of List II of VII Schedule of the Constitution read with Article 246 of the Constitution, Government of the State, in exercise of its executive power, is competent to give instructions to Co-operative Societies for their better functioning, constitution of a committee by the government, to frame OTS scheme, for early recovery of the amounts due to the Bank, cannot be said to be ultra vires its power. It is his contention that some of the depositors of the Bank, and the Liquidator of the Bank, appeared before the committee appointed by the Government vide vide G.O.Rt.No.1248 dated

24-11-2004, and submitted their proposals to that committee on 28.12.2004, and the committee met the borrowers on 15-12-2004 and the depositors on 16-12-2004, and Sri A.Subramanyam of the Depositors' Association participated in the proceedings and expressed his view that OTS scheme may be given without mentioning the rate of interest and so the committee agreed with the proposals of the Bank and the

Liquidator and made recommendations to the Government to accept those proposals, which were agreed to by the Government with certain modifications, and thereafter, the Liquidator submitted his proposal to the committee signifying his acceptance to the modified OTS scheme, and sent the said proposal to the RCS for his approval, and was approved by the RCS, and so the OTS scheme is neither arbitrary nor illegal. It is his contention that in any event since as per the section 43(g) of the 1995 Act Liquidator has the power to settle and compromise any claim of the Society (Bank) and since Section 43(h) of the Act empowers the liquidator to do "all things necessary for the liquidation of the Co-operative Society and distribution of its property", Liquidator does have the power to enforce OTS scheme and contended that since the Liquidator of the Bank is functioning under the supervision of the RCS, Liquidator submitted the proposals for OTS to the RCS for his approval. Relying on **G.S.INDUSTRIAL GASES (P) LTD. V. MANAGING DIRECTOR, A.P.STATE FINANCIAL CORPN.** where it is held that OTS scheme framed by the A.P. State Finance Corporation for settlement of recovery of loans from defaulters is not liable to be challenged on the ground that it amounts to giving rewards to defaulters while genuine debtors who repay the loans in time have to pay more than what is sought to be recovered from the defaulters, he contended that there are no grounds to set aside the OTS scheme.

11. The points for consideration are:

1. Whether the writ petitions questioning the order of RBI cancelling the Banking Licence of the Bank, when an appeal filed under Section 22(5) of the Act is pending before the Central Government is maintainable?

2. Whether appointment of a Liquidator to the Bank by the RBI to wind up the Bank is not valid?

3. Whether the OTS scheme impugned is not valid?

12. Before taking up the points for consideration, it has to be stated that there can be no dispute for the proposition that merely because it is doing banking business, a

Co-operative Society doing banking business does not cease to be a Co-operative Society as held in **VIRENDRA PAL SINGH** case (4 supra) and **B.SURYANARAYANA** case (5 supra). So, the bank would still be a Co-operative Society and would be governed by the provisions of the 1995 Act and also 1964 Act, as contemplated by Section 36-A of 1995 Act.

13. Contention about the maintainability of W.P.No.23156 of 2004 was raised on the ground that petitioner therein has no locus standi to file the petition. The fact that the petitioner in W.P.No.23156 of 2004 is a depositor and that he invested his money in the Bank is not denied or disputed. As a depositor he has a right to question the transactions and events, which eventually affect his right as a depositor of money into the Bank. So, I do not agree with the contention that petitioner in W.P.No.23156 of 2004 has no locus standi to file the writ petition questioning the order of the RBI and the RCS.

POINT NO.1:

14. As rightly contended by the learned standing counsel for RBI and the learned Government Pleader and the learned senior counsel for the Bank and the Liquidator, since appeal preferred under Section 22(5) of the Act by the person-in-charge of the Bank, questioning the order of the RBI cancelling the banking licence of the Bank is pending before the Central Government, the validity of that order of the RBI cannot be gone into by this Court at this stage. If the petitioners are so advised they can get themselves impleaded as parties to the appeal before the Central Government, and depending on the result of the appeal, they can pursue the remedies open to them. Therefore, I hold that these petitions questioning the order of the RBI cancelling the Banking licence of the Bank are not maintainable at this stage, as they are premature. The point is answered accordingly.

POINT NO.2:

15. For the reasons best known to them none of the respondents produced the order of the RBI directing winding up of the Bank. So, the basis on which the RBI ordered winding up of the Bank is not known. Order cancelling the Banking licence of the

Bank was issued by the RBI in its proceedings UBD.WBS.BSD.IV/LC/71/ 12.03.0775/2004-05 dated 03-12-2004 and were communicated vide letter Ref.No.WBS.BSD((IV) 3792/12.03.0775/2004-05 dated 06.12.2004. In para-9 (xiii) at page 22 of the counter affidavit filed on behalf of RBI, it is stated-

> "As regards the averments made in para 14, it is submitted that the same are not true and hence denied. It is submitted that in terms of Section 36A of Andhra Pradesh Mutually Aided Cooperative Societies Act read with Section 115-B of the Andhra Pradesh Cooperative Societies Act, read with section 13D of Deposit Insurance and Credit Guarantee Corporation Act, the RBI, C.O., Mumbai, vide his order No.UBD.WBS.IV/RLC/73/12.03.0775/2004-05 dated December 3, 2004 had required the Registrar of Coop. Societies, A.P., Hyderabad to make an order for winding up the Prudential Coop. Bank Ltd., Secunderabad. The order dated 03.12.2004 passed under section 22(4) of Banking Regulation Act, 1949 and requisition dated 3.12.2004 are legal and justified. The Registrar is legally obliged to comply with the order of the Reserve Bank and to pass order of liquidation of the bank and to appoint liquidator."

So, it is clear that a separate order to wind up the Bank by invoking the power under Section 13D of 1961 Act was passed. But, as stated above, that order is not produced.

16. As per the paper cutting of Deccan Chronicle dated 09.03.2003, filed as a material paper along with other material papers, the Bank is the 'oldest Cooperative Bank in the State'. No doubt, as per Section 13D(1)(b) of 1961 Act, RBI can order winding up of a co-operative bank when its banking licence is cancelled as per Section 22 of the Act. But, in my considered opinion, the RBI invoking its power under Section 13D of the 1961 Act, either simultaneous or on the same day on which it passed the order under Section 22(4) of the Act cancelling the licence would be improper, because that order is subject to an appeal under Section 22(5) of the Act. If the appeal to the Central Government were to be allowed, and if during the pendency of the appeal, the liquidator were to wind up the co-operative bank, question of restoring status-quo ante, and reconstituting the dissolved co-operative bank does not and cannot arise and thus the remedy of appeal becomes useless, and would be an exercise of futility, and would make the remedy of appeal otiose and an exercise for academic purpose. So, the RBI should wait till the appeal time is over and then only pass an order for winding up of a co-operative bank. If the RBI wishes to exercise its power to order winding up of a
co-operative bank even during the pendency of the appeal, it should give an

opportunity of being heard to the co-operative bank.

17. In this case, RBI, after conducting the Statutory inspection of the Bank, placed the Bank under 'sick' category from 'weak' category, with effect from 31.07.2002 and started issuing directions under Section 35 of the Act from 21.03.2003, and directed the RCS to supercede the Board of Directors of the Bank and appoint an administrator in its place, initially for a period of one year, and accordingly the RCS, vide his proceedings in Rc.No.5576/99-U.B.V. dated 25.03.2003 appointed a Special Officer to manage the affairs of the Bank. So, it is clear that the management of the Bank was in the hands of a Special Officer, and it is the Special Officer that was running the Bank as per the directions being issued by the RBI from time to time under Section 35-A of the Act from 21.03.2003. The Bank virtually was not permitted to carry on any 'banking' business as it was not permitted to receive or repay deposit or lend money and was asked to pay small amounts of money to all depositors, irrespective of the maturity date of deposits. The reasons mentioned by RBI for cancelling the banking licence are-

i. The financial position of the bank is precarious and that there is no scope or likelihood of its survival;

ii. The bank is not in a position to honour its commitments;

iii. The affairs of the bank are being conducted in a manner detrimental to the interests of its present and future depositors; and

iv. Public interest would be adversely affected if the bank is allowed to carry on its banking business any further.

In its reply the Bank stated that its assets are more than its liabilities. When the Bank was being run as per the directions issued by the RBI and though a person-in-charge appointed by the RCS, on its (RBI's) directions, neither the Bank nor its members can be found fault with, for the Bank's inability to recover.

18. Along with the material papers, xerox copy of a paper cutting of Deccan

Chronicle dated 24.08.2004 also is filed. It shows that from January 2002 to 25.08.2004 licences of as many as 23 Urban Co-operative Banks were cancelled by the RBI. Judicial notice can be taken of the fact that Charminar Co-operative Urban Bank also was under the directions of RBI. Xerox copy of the paper cutting of Deccan Chronicle dated 19.01.2004 shows that notice of a scheme of reconstruction of the said Bank i.e. Charminar Urban co-operative bank was taken up. Here it should be stated that the Chairman of the Charminar Urban Co-operative Bank committed suicide. Thereafter several irregularities committed in that bank surfaced. It also came to light that several governmental organizations and government corporations made huge deposits of money in that Bank. Obviously, for that reason attempts to reconstruct Charminar Co-operative Bank were made. As far as the Bank is concerned the story seems to be the otherway round. Heavy amounts seem to have been lent to 'influential persons'. List of '23 Big Borrowers' who owe more than one crore of rupees to the Bank is furnished by the Liquidator of the Bank, with the material papers. Among them are four MLAs and one Central Minister (Xerox copy of paper cutting of 'The Hindu' dated 26.05.2004 filed with the material papers also mentioned that fact). The total amount due from those 23 big borrowers is said to be Rs.209.29 Crores. In para-9(x)(iii) at page 13 of the counter affidavit filed on behalf of RBI, it is stated

> "the deposits and advances (of the Bank) as on 30.06.2004 stood at Rs.433.04 crores and Rs.324.71 Crores respectively."

So, prima facie it is clear that from out of Rs.324.71 crores lent by the Bank, Rs.209.29 crores was lent only to 23 'influential persons'. Xerox copy of paper cutting of Deccan Chronicle dated 09.03.2003 filed along with the material papers listed the names of the 'big borrowers' from the Bank. So, if the Bank is ordered to be wound up, all the big borrowers may have respite. It is the specific case of the petitioners that those big borrowers are bringing pressure on the State and Central Government. Probably that is the reason for the RBI ordering winding up of the Bank, even without putting the members of the Bank on notice about its intention to take such a drastic step.

19. Learned senior counsel for the Bank and the Liquidator, placing strong reliance on **RESERVE BANK OF INDIA** case (3 supra) contended that when once the RBI, by

invoking its power under Section 13D of 1961 Act, passes an order for winding up of a

co-operative bank, the provisions of Section 115-B of the 1964 Act automatically come into play and the RCS has no other option but to pass the consequential order and so there is no need for RCS to issue any show cause notice before appointing a Liquidator. Though, prima facie, that contention appears to be acceptable, on deeper examination, I am unable to agree with the said contention, because the decision relied on by the learned senior counsel relates to an order of the RBI superceding the Board of Directors of a co-operative bank. It is not a case of the RBI ordering winding up of a co-operative bank. Order of supercession of board of directors of a co-operative bank is covered by Section 115-B(iii) of 1964 Act, and order of winding up of a co-operative bank is covered by Section 115-B(ii) of 1964 Act. No doubt, the expression 'under the provisions of this Act' is used both in sub-clauses (ii) and (iii) of Section 115-B of 1964 Act, and the Division Bench, in the decision relied on by the learned senior counsel, held that the words 'under the provisions of this Act' in Section 115-B(iii) empower the RCS to make an order in terms of the directions of the RBI even without issuing a show cause notice. Here it should be kept in view that there is any amount of difference between an order superceding the Board of Directors of a Co-operative bank and an order winding up of a Co-operative bank. Superceding the board of directors of a co-operative bank affects only the directors of that Co-operative bank. Since winding up wipes out the existence of a co-operative bank, that order effects all the members and also the creditors i.e. depositors of the co-operative bank. Here, I should say that the role of RBI vis-a-vis a co-operative bank can be compared to a Doctor and a patient. When the RBI declares a co-operative bank 'weak', it is akin to its admitting that co-operative bank as an 'inpatient' in its fold (hospital) for treatment. When it declares it a 'sick bank' it is akin to putting the co-operative bank in the 'Intensive Care Unit' and when it takes a decision to cancel the banking licence of a co-operative bank it is akin to putting a patient on a ventilator. Order of winding up is like taking a decision to remove the Ventilator, after losing all hope about the survival of the patient, and letting him die. After having decided to put a patient on Ventilator, doctor would not immediately take it away and let the patient die. The doctor would observe at least for some time whether the patient would recover. As stated earlier, Section 13D of 1961 Act empowers the RBI to pass an order for winding up of a co-operative bank on several grounds enumerated therein. Before exercising that power a show cause notice will

have to be given for the concerned co-operative bank to explain why it should not be wound up, like the doctor informing the attendants of a patient on Ventilator about his decision to remove the Ventilator.

20. There is nothing on record to show that the Special Officer appointed by the RCS, after superceding the board of directors of the Bank as per the directions of the RBI, convened a meeting of the General Body of the Bank, and no member of the Bank seem to be kept on notice as to what has been happening. Their knowledge, obviously, seems to be only through the news paper reports. Since winding up of the oldest co-operative bank in the State has some consequence, its members have to know the circumstances under which its banking licence has been cancelled, and they should be permitted to discuss and take a decision whether any steps can be taken to revive the Bank and the persons responsible for the collapse so as to take steps against them. In fact, from **B.SURYANARAYANA** case (5 supra), which is a writ appeal, it is clear that after the RBI requested the RCS to initiate action for liquidation of that co-operative bank, a show cause notice was issued by the RCS. The relevant portion of the said decision in para-3 at page 246 reads:

> "Thereupon the Reserve Bank on 4-2-1980 requested the Registrar of Co-operative Societies to initiate action for the liquidation of the Bank, and so after observing the due formalities of show cause notice and so forth winding up orders were issued."

The judgment of the learned single judge, out of which that writ appeal arose, was reported in AIR 1983 ANDHRA PRADESH 1. In para-5 at pages 3 and 4 of the judgment of the learned single judge, the counter affidavit filed on behalf of the RBI is referred to. The relevant portion reads:

> "Thereupon, the Reserve Bank by D.O. letter dated
> 4-2-1980 requested the Registrar of Co-operative Societies to initiate action for liquidation of the bank. After issue of a show cause notice, the Deputy Registrar issued orders of winding up on 16-4-1980 and appointed the Taluk Co-operative Officer, Tenali as Liquidator and the said officer took charge on 17-04-1980."

Here, it should be kept in view that Chapter XIII-A of 1964 Act containing Sections 115-A and 115-B was incorporated in 1964 Act by A.P. Act 10 of 1970. There are no amendments to those sections thereafter till now. When in 1980 both the RBI and

RCS knew that a show cause notice has to be issued by the RCS to a co-operative bank which is ordered to be wound up by the RBI, to explain why it should not be ordered to be wound up, I wonder how the RCS straightaway appointed a Liquidator without giving a show cause notice to the Bank in 2004. It could be either due to the staff not placing the precedents before him, or his not caring to follow the precedents. Be that as it may, the above said decisions were not taken into consideration by the Division Bench in **RESERVE BANK OF INDIA** case (3 supra) relied on by the learned senior counsel for the RBI.

21. As stated above, decision to wind a co-operative bank is the last resort. So, the co-operative bank and its members should know about the intention of RBI to order its winding up and they should be given an opportunity of being heard. At no time, did the RBI ask the Bank or its members to explain why an order of winding up should not be passed against the Bank. Question of general public being adversely effected by the continuance of the Bank, after its banking licence is cancelled, does not and cannot arise because it cannot carry on baking business after its banking licence is cancelled. Its managing committee is also not in existence, as the person appointed by the RCS has been running the Bank. So, by granting an opportunity of being heard to the Bank and its members, public interest does not suffer.

22. For the above reasons, I hold that the RBI should not pass an order for winding up of a co-operative bank simultaneously or along with an order cancelling the banking licence, because such an order would make the remedy of appeal nugatory. If the RBI wishes to pass an order for winding up a co-operative bank, after it passed the order cancelling its licence, it has to issue a show cause notice to the co-operative bank concerned to enable the members of that co-operative bank to discuss among themselves as to what should be done. In this case, since no such notice is given, the order of the RBI directing winding up of the Bank without issuing a notice to the Bank, and the consequential order passed by the RCS without following the procedure prescribed either in 1995 Act or in 1964 Act of issuing a show cause notice or calling for the general body meeting of the members of the Bank, are liable to be and hence are set aside. The point is answered accordingly.

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POINT NO.3:

23. Relying on **SANT SADHU SINGH v. STATE OF PUNJAB** and **CENTRAL CO-OPERATIVE BANK, NAGPUR v. DIVNL. JT. REGISTRAR,** the learned senior counsel for the Bank and Liquidator contended that the State Government by exercising its executive powers, directed issuance of OTS scheme. It is no doubt true that as per Article 162 of the Constitution the executive power of the State extends to the matters with respect to which the Legislature of the State has power to make laws, but it is subject to the restriction placed in the proviso to that Article i.e. such power is restricted to and is limited by the executive power expressly conferred by the Constitution or by the law made by the Parliament upon the Union or authority thereof, if the subject is such that the Parliament also can make laws thereon.

24. In **SADHU SINGH** case (7 supra) the point for consideration was if the State (Punjab) Legislature is competent to make laws pertaining to banking Corporation, Co-operative Societies doing Banking business and the scope of entry 45 of List I of VII Schedule vis-à-vis the entry 32 of List II of VII Schedule of the Constitution. In my opinion, the observations in para-8 of the Judgment are relevant.

> "Before proceeding to deal with the respective contentions of the learned counsel for the parties, it may be mentioned that any legislation regarding the banking business as such can only be undertaken under entry No.45, List I, whereas regulation of Corporations doing Business of Banking falls under entry No.43. But Co-operative Societies are excluded from this entry and have been put in entry No.32, List II, Schedule VII. This is also evident from the Banking Companies Act, as amended up to date, and the Reserve Bank of India Act. The Co-operative Societies doing banking business are put on par so far as entry No.45, List I is concerned, with other banking institutions. While construing entry No.45, the Federal Court of India in Bank of Commerce, Ltd., Khulna v. Nripendra Nath Datta, AIR 1945 FC 7, observed as follows:--
>
> "On a reasonable construction, the entry must be limited to laws which affect the conduct of the business of banks qua banks."

So, it is clear that anything connected with business of banks qua banks would fall under Entry 45 of List I of VII Schedule. The OTS scheme in this case does relate to business of the Bank, qua
the Bank and so it would fall under Entry 45 of List I of Schedule VII of the

Constitution, and so, in my considered opinion, the executive power of the State does not extend to giving instructions to the co-operative banks, including the Bank, to implement OTS scheme, that too without taking the concurrence of RBI.

25. **CENTRAL CO-OPERATIVE BANK** case (8 supra) relates to the validity of an ordinance and the Act replacing the said ordinance amending the provisions of the Co-operative Societies Act and the power of Divisional Joint Registrar of Co-operative Societies to remove the Director of the Co-operative Society and to appoint an administrative officer in their place. So, this decision, in my opinion, is not much of help to decide this point.

26. In **VIRENDRA PAL SINGH** case (4 supra) their Lordships, inter alia, were considering the question whether some of the provisions of the U.P.Co-operative Societies Act, 1965, in so far as they are sought to be made applicable to Co-operative banks is beyond the competence of the State Legislature. After examining the provisions of that Act it was held that that Act, in pith and substance, deals with Co-operative Societies only, and so the fact that it trenches upon banking 'incidentally' does not take it beyond the competence of the State Legislature. For coming to that conclusion their Lordships relied on the following observation in para-10 of Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., (74 IA 23).

> "Subjects must still overlap, and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with."

In pith and substance the OTS scheme, impugned, relates to 'banking' only and has nothing to do with 'co-operative societies' for the State Government to exercise its executive power, more so because neither 1964 Act nor 1995 Act vest power either in the Government or in the RCS or any other authority to frame OTS scheme. For the first time the Government, for reasons known only to it; took upon itself, the task of constituting a committee to prepare a scheme for recovery of debts due to three Co-operative banks ostensibly under Article 162 of the Constitution. From the memo impugned the OTS scheme is made applicable only to the Bank. Whether the two other co-operative banks implemented the scheme or not is not known. Here, it

should be mentioned that in paras 7 and 11 of his affidavit filed in support of W.P.No.23156 of 2004, petitioner specifically alleged that government, yielding to the dictates of big borrowers, is trying to implement OTS scheme only with a view to favour those big borrowers who owe more than Rs.200.00 Crores to the Bank without taking steps to proceed against those debtors.

27. A reading of the minutes of the meeting of the committee constituted by the government held on 28.12.2004, shows that the Chairmen of Vasavi Co-operative Urban Bank and Charminar
Co-operative Urban Bank clearly stated that prior approval of the RBI is required to implement the OTS scheme and even the Principal Secretary agreed with the view that the proposed modified OTS scheme requires the approval of the Government and RBI. So, it is clear that even as per the Principal Secretary prior approval of the RBI is required for implementation of OTS scheme. Admittedly, the Liquidator did not obtain the prior approval of the RBI for implementation of the OTS scheme.

28. All the above apart, since I held that the appointment of a Liquidator is bad, the OTS scheme allegedly proposed by him has to be set aside. Even otherwise also, merely because the Liquidator is appointed as per the directions of the RBI, he cannot without prior approval of the Central Government and/or RBI introduce OTS scheme relating to the debts due to the Bank. Merely because Section 43(1)(g) of 1995 Act vests the power to enter into a compromise and settle claims and merely because Section 43(1)(h) of 1995 Act enables him to do anything which he considers necessary for liquidation of a Co-operative Society, the liquidator cannot, at his whim and fancy implement an OTS scheme. He should keep in view that Section 43(1)(g) and (h) do not clothe him *carte blanche* to do anything he likes to literally 'liquidate' the Bank, merely because he is appointed as the 'Liquidator' of the Bank. So, merely because, he has the power to do anything necessary for liquidation of the Bank, he cannot waive interest on all loans and receive only Principal from the debtors of the Bank in full settlement of the debts, ignoring the capacity of the debtor to repay the amount as per the contract. Such exercise of power would not be a valid exercise of power. Those provisions in Section 43(1) of 1995 Act enable the Liquidator to tackle each case separately and individually,

depending on its facts and circumstances of each case. They do not contemplate giving concessions enbloc, without applying his mind to each case, to facilitate early and easy 'liquidation' of the Bank.

29. **G.S.INDUSTRIAL GASES (P) LTD.** case (6 supra) has no application to the facts of this case because that is the case of a creditor giving concession to a certain types of debtors only. The other debtors who were not extended that benefit challenged the scheme on the ground of discrimination. Had the Bank not been under the orders of winding up, and had the Bank itself taken a decision for implementation of OTS scheme, even without the permission of the RBI, may be the above decision could have come to the rescue of the management of Bank because, elected members commissions and omissions would be taken care of by the General Body under the provisions of the 1995 Act. Liquidator is in the position of a Trustee. So, he has to take care of the interests of the members and also the depositors and should act like an ordinary prudent man. The question to be put to himself would be, whether any ordinary prudent man would take, or appreciate, the decision to collect simple interest only, from all the debtors, in spite of the fact that many of the debtors can pay the contract rate of interest, and without taking into consideration if the debt can be recovered from the concerned debtor or not. The answer, in the present case would be an emphatic 'No'. For that reason also OTS scheme is liable to be set aside.

30. The contention that the OTS scheme is the brain child of the Liquidator and that he made the proposal to the Government to accept it, ex facie is not correct because, it is the Committee appointed by the Government that made the proposal. The Liquidator is an officer in the Co-operative Department, who is a subordinate to RCS and would be under his control. The RCS acts under the directions of the Government. Government wanted to implement OTS scheme, which as per the contentions of petitioner is for the benefit of big borrowers. As per the directions of the Government, the Liquidator sent proposals to RCS and RCS accepted the proposals. All that exercise is only a make believe exercise to befool the public. The intention to introduce OTS scheme in the Bank is that of the Government is an admitted fact. In accordance with that intention the Liquidator was asked to propose

OTS scheme as suggested by the committee appointed by the Government. Such exercise in the words of De Smith would be the decision of the Government but not that of the Liquidator

> "THE relevant principles formulated by the Courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive." (see para-24 of *STATE OF UTTAR PRADESH v. MAHARAJA DHARMANDER PRASAD SINGH*)

and so, I hold that the decision to introduce OTS scheme is not that of the Liquidator but is that of the Government who has an intention to help the 'big debtors' of the Bank and since the Government has no power to direct introduction of OTS scheme in the Bank, the same is liable to be set aside. The point is answered accordingly.

31. As rightly contended by the learned senior counsel for the Bank and the Liquidator, W.P.M.P.No.2333 of 2005 appears to be beyond the scope of W.P.No.23156 of 2004 and hence the same is liable to be dismissed.

32. In the result, W.P.No.23156 of 2004 is partly allowed and the order of the RBI directing winding up of the Bank and the consequential order of RCS appointing a Liquidator to the Bank without affording an opportunity of being heard to the Bank are set aside. W.P.No.2501 of 2005 is allowed and the OTS scheme approved by the RCS in Proceedings No.55765/1999 U.B.V. dated 24-01-2005 is set aside. W.P.No.24346 of 2004 and W.P.M.P.No.2333 of 2005 in W.P.No.23156 of 2004 are dismissed. Parties are directed to bear their own costs.

(C.Y.Somayajulu, J.)

Date: 05-05-2005

Cvrk

Note: L.R. copy to be marked.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting the Chief Justice on this Thursday, The Fifth Day Of May, Two Thousand And Five.

..... REGISTRAR

To

1. Reserve Bank of India, Central Office, Urban Banks Department, 1st Floor, Garment House, Worli, Mumbai-400 018.

2. Commissioner for Cooperation and Registrar of Coop., Society, Gruhakalpa, Exhibition Grounds Road, Hyderabad.

3. The Principal Secretary, Government of Andhra Pradesh, Co-op And Agriculture, Secretariat, Hyderabad.

4. The Registrar of Co-operative Societies, Govt. of A.P., Hyderabad.

5. 2 CD copies

6. 1 CC to MR.SRINIVAS, Advocate

7. 1 CC to MR.ASHOK ANAND KUMAR, Advocate

8. 1 CC to MR.UGLE, Advocate